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Nos. 690, 63 Misc.

In the Supreme Court of the United States

OCTOBER TERM, 1946

INSURANCE GROUP COMMITTEE, REORGANIZATION COMMITTEE, GUARANTY TRUST COMPANY OF NEW YORK, TRUSTEE, CENTRAL HANOVER BANK AND TRUST COMPANY, TRUSTEE, UNITED STATES TRUST COMPANY OF NEW YORK, TRUSTEE, AND THE CHASE NATIONAL BANK OF THE CITY OF NEW YORK, TRUSTEE, PETITIONERS

v.

THE DENVER AND RIO GRANDE WESTERN RAILROAD COMPANY, ET AL., RESPONDENTS

ON PETITIONS FOR WRITS OF MANDAMUS AND PROHIBITION AND A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE 10TH CIRCUIT

MEMORANDUM OF RECONSTRUCTION FINANCE CORPORATION

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MEMORANDUM OF RECONSTRUCTION FINANCE CORPORATION

In view of the facts that (a) the Reconstruction Finance Corporation (hereinafter referred to as the RFC) participated in the proceeding before this Court decided in *Reconstruction Finance Cor-*

poration, et al., v. *The Denver and Rio Grande Western Railroad Company, et al.*, 1945 Term, Nos. 278–282, decided June 10, 1946, and (b) the RFC is a large creditor of The Denver and Rio Grande Western Railroad Company, the RFC respectfully submits this Memorandum in order to prevent any possible misunderstanding of its position with respect to the petitions filed by the above mentioned petitioners.

Because of the action of the Congress last Summer in passing the Bill known as S. 1253 and the reasoning of the President's Memorandum of Disapproval, dated August 13, 1946, both of which indicated disapproval of certain features of railroad reorganizations approved pursuant to the provisions of Section 77 of the Bankruptcy Act, which is the existing law, the RFC, as an agency of the United States created and existing by virtue of Congressional enactment, is not taking any position as to whether the petitions should be granted.

This does not mean that there has been any change in the position of the RFC with respect to the treatment for its claim provided in the plan of reorganization approved by the Interstate Commerce Commission on June 14, 1943, and supported by the RFC in the proceeding decided by this Court in *Reconstruction Finance Corporation, et al.*, v. *The Denver and Rio Grande Western Railroad Company, et al., supra.*

Attention is called to the fact that the plan provides that, in the event of the consolidation of The Denver and Salt Lake Railway Company and The Denver and Salt Lake Western Railroad Company with The Denver and Rio Grande Western Railroad Company, the RFC is to receive for its claim substantially different treatment from that which it would receive if such consolidation should not be effected. This is shown by section J of the plan which is set forth in the Appendix. The RFC has recently received advice that the holders of 90% of the outstanding Income Bonds of The Denver and Salt Lake Railway Company have voted for the modification of the terms of such Bonds which by section B of the plan has been made a condition precedent to the consolidation, and therefore the way has been paved for the consolidation. Accordingly, if the plan is consummated, the RFC will receive treatment for its claim on the alternative basis which it strongly prefers.

Respectfully submitted.

GEORGE T. WASHINGTON,
Acting Solicitor General.
JOHN D. GOODLOE,
General Counsel,
W. MEADE FLETCHER,
Chief Railroad Counsel,
Reconstruction Finance Corporation.

Dated November 15, 1946.

APPENDIX

Extract from the plan of reorganization of The Denver and Rio Grande Western Railroad Company approved by the Interstate Commerce Commission on June 14, 1943, and subsequently approved and confirmed by the United States District Court for the District of Colorado:

J. In the event that consolidation of the Salt Lake properties is to be effected as provided herein, the Reconstruction Finance Corporation shall receive, in payment of the debtor's and secondary debtor's notes to it, with accrued interest to December 31, 1942, $5,200,000 of new first-mortgage bonds and $8,700,605 of new income bonds plus the amount of the rental or other use and occupation claim of the Salt Lake Western trustee against the principal debtor's trustees which may be allowed by the court. Upon receipt of such new securities, the Reconstruction Finance Corporation shall deliver to the reorganization committee all the securities now held under pledge.

Nothing contained herein shall be construed as limiting in any manner affecting the right of the Finance Corporation to apply, in its discretion, the income on and the proceeds of the collateral held by it to or toward the payment of the principal or interest, or both, to or upon its claim against the debtor prior to the consummation of the reorganization.

In the event consolidation of the Salt Lake is not to be effected as herein provided,

the claim of the Reconstruction Finance Corporation shall be provided for as follows: For the $1,445,000 of Denver & Rio Grande Railroad Company consolidated-mortgage 4-percent bonds, $10,000 of Rio Grande Western Railway Company first trust 4-percent bonds, $1,395,000 of the Rio Grande Western Railway Company consolidated-mortgage 4-percent bonds, and $4,385,000 of the debtor's refunding and improvement mortgage 5-percent bonds, pledged as part security for the loans, the Reconstruction Finance Corporation shall be entitled to receive $1,566,846 of new first-mortgage bonds, $1,388,150 of new income bonds, $3,181,757 of new preferred stock and $3,861,910 of new common stock. These new securities, together with the $1,266,000 of Denver & Salt Lake income bonds, 500 shares of Goshen Valley stock, $1,777,000 of Rio Grande Southern first-mortgage bonds, 73,710 shares of Denver-Colorado Springs-Pueblo Motorway stock, 2,262 shares of Rio Grande Motorway stock, 45,889 shares of Denver & Salt Lake stock, and 36,310 shares of Salt Lake Western stock, now held in pledge, shall be deposited under an escrow agreement with a bank or trust company designated by the court, and escrow receipts therefor shall be issued to the Reconstruction Finance Corporation. The agreement shall be for a term of 6 years, and shall provide that the escrow agent (1) shall, at the request of the Reconstruction Finance Corporation, sell all or any part of the deposited securities at such price or prices as may be stated in the request, subject in the case of the sale of the stock of the Denver & Salt Lake, and of the Denver & Salt Lake Western, to any-

one other than the new company, to the approval of this Commission both as to the sale and as to the price to be paid, and (2) shall impound any or all receipts from the deposited securities, whether from sale, dividends, or interest, and make payments of same promptly to the Reconstruction Finance Corporation which shall agree to credit such receipts first against the interest accrued on the claim of $13,900,605 from January 1, 1943, to date at the rate of 4 percent per annum, and further agree to apply any funds received in excess of such interest requirement to reduction of the principal of the claim; *provided, however,* (1) that the new company shall have the right to purchase at any time all of the stock of the Salt Lake, or of the Salt Lake Western, which the Reconstruction Finance Corporation shall have requested the escrow agent to sell, at the price or prices stated in such request; (2) that if, prior to the expiration of the escrow agreement, the total sum paid through the foregoing means to the Reconstruction Finance Corporation shal equal the total amount due on the claim with accrued interest, the securities remaining in the hands of the escrow agent, together with any cash on hand after settlement of the said debt, shall forthwith be turned over to the new company; and (3) that, if at the expiration of the escrow agreement, the claim of the Reconstruction Finance Corporation shall not have been discharged in full, all the securities remaining on deposit, together with any cash balance, shall be turned over to the Reconstruction Finance Corporation in final settlement of its claim, subject, however, to the right of the new company, prior to such transfer,

to acquire all of such securities by payment of the balance then due on the Reconstruction Finance Corporation claim, including interest.

It shall be provided that the Reconstruction Finance Corporation shall be bound by the terms of any sale or sales to which it has consented and which have been approved by this Commission. During the life of the escrow agreement, the Reconstruction Finance Corporation shall have the right to receive notice of all meetings of the holders of stocks under deposit and to direct the escrow agent as to the manner in which stocks represented by the escrow receipts shall be voted at such meetings. In the absence of such directions, the deposited stocks shall be voted in such manner as the escrow agent may determine. The reasonable compensation and expenses of the escrow agent shall be paid by the new company.

The money value of any award for the rental or other use and occupation claim of the Salt Lake Western trustee against the principal debtor's trustees, as allowed by the court, shall be paid over to the Reconstruction Finance Corporation and the amount of the claim, or of the face amount of any note evidencing the indebtedness, correspondingly reduced without otherwise affecting the foregoing provisions with respect to the discharge of the claim where consolidation is not to be carried out.

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